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and certain subsidiaries

**IN THE UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF ARIZONA**

In re:

BAPTIST FOUNDATION OF ARIZONA, an  
Arizona nonprofit 501(c)(3) corporation, and  
related proceedings,

Debtors.

) In Proceedings Under Chapter 11  
)  
) Case Nos. 99-13275-ECF-GBN through 99-  
) 13364-ECF-GBN  
)  
) All Cases Jointly Administered Under Case  
) No. 99-13275-ECF-GBN  
)  
) **DEBTORS' OBJECTION TO CLAIMS OF**  
) **ORME LEWIS, JR., TRUSTEE, AND**  
) **THOMAS P. CHURCH**  
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Pursuant to Rule 3007 of the Bankruptcy Rules of Procedure and Section 502(a) of the Bankruptcy Code, Debtor and Debtor-in-Possession, Baptist Foundation of Arizona, Inc. (and certain of its subsidiaries, who also may be co-debtors, as applicable; collectively “**BFA**”), submits the following objection to the three proofs of claim filed by Orme Lewis, Jr., Liquidating Trustee of the Liquidating Trust of Tom Church Investments and Thomas P. Church (“**Lewis**”),

and the proof of claim filed by Thomas P. Church (“**Church**”). In support of its objections, BFA offers the following memorandum of points and authorities.

## **MEMORANDUM IN SUPPORT OF OBJECTION**

### **I. FACTS**

#### *The Lewis Proofs of Claim*

On March 30, 2000, Lewis filed three proofs of claim as Liquidating Trustee of the Liquidating Trust of Tom Church Investments and Thomas P. Church pursuant to the confirmed Trustee’s Third Amended Plan of Reorganization in Bankruptcy Case Nos. 91-08137-PHX-CGC and 91-08549-PHX-CGC, which cases were substantively consolidated.

The first of the three Lewis proofs of claim, filed against all 90 of the debtors listed on the proof of claim form, is based on the bulk sale of various properties, viz, Carefree Hills, Mountain View, M1, Carefree Central 5, 8.8 acres, and North Central Five. Specifically, Lewis asserts an unsecured nonpriority claim in the amount of \$62,128.44 based on an allegation that of the \$77,660.55 in net proceeds BFA received from the sale of these properties at the closing of the sale, BFA was only entitled to 20%, or \$15,532.11. The proof of claim also seeks interest on the claim amount from April 29, 1998 to November 9, 1999.

Lewis’ second proof of claim, also filed against all 90 debtor entities, is based on the proceeds from another sale of properties known as Van Buren I, II, and III. Similar to his first proof of claim, Lewis contends that of the \$129,809.96 in net proceeds BFA received from the sale of these properties at closing, BFA entities were entitled to only \$29,258.89. Thus, Lewis asserts an unsecured nonpriority claim for the difference of \$100,551.07. This proof of claim seeks interest on the claim amount from January 6, 1998 to November 9, 1999.

Lewis’ third proof of claim is based on (since-dismissed) litigation claims against various BFA entities (Tom Church, et al. v. Foundation Companies, Inc., et al., Case Nos. 97-

12491, 97-12501 (consolidated) (Ariz. Sup. Ct., Maricopa Cty.)) that was sold to Thomas Church individually for a nominal sum plus an assignment of 50% of any net proceeds that might be recovered from the litigation. The litigation claims, which alleged “(1) breach of contract concerning commitment to lend; (2) breach of the covenant of good faith and fair dealing; (3) breach of contract regarding . . . ‘credit enhancement’; (4) fraud in numerous particulars; (5) tortious interference with numerous contracts; (6) malicious defense in bankruptcy; (7) intentional infliction of emotional distress by keeping the Churches in bankruptcy; (8) RICO; (9) defamation and holding up to a false light; (10) punitive damages . . . for outrageous behavior; [and] (11) attorney’s fees for breach of contract,” all centered upon on purported oral promises by BFA to commit to continue to loan money to Church and Church-related entities.

Church’s litigation claims have since been dismissed. (See attached Order dismissing Case Nos. CV-12491 and CV-12501).

### ***The Church Proof of Claim***

On March 31, 2000, Church filed a proof of claim that is identical in scope to the third Lewis proof of claim asserting an unsecured nonpriority claim in an undetermined amount based on any sums he might recover in the (now dismissed) litigation he brought against the various BFA entities.

## **II. LAW AND BASIS FOR OBJECTION**

Objections to claims are governed by 11 U.S.C. § 502(a), which provides that “[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, . . . objects.” Section 502(b) provides that “[i]f such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount.”

Federal Rule of Bankruptcy Procedure 3001(f) provides that a proof of claim filed in accordance with the rules “shall constitute prima facie evidence of the validity and amount of the claim.” The burden of proof is on the objecting party to produce evidence equivalent in probative value to that of the creditor to rebut the prima facie effect of the proof of claim. However, “the ultimate burden of persuasion is always on the claimant.” In Re Holm, 931 F.2d 620, 623 (9th Cir. 1991) (citing 3 L. King, *Collier on Bankruptcy* § 502.02, at 502-22 (15th ed. 1991) (footnotes omitted)).

A properly supported objection to a claim initiates a contested matter under the Bankruptcy Rules of Procedure. See Fed. R. Bankr. P. 3007 (adv. comm. note).

BFA objects to Lewis’ first proof of claim as to amount. While BFA admits that it may have received more funds from the bulk sale of properties than it otherwise would be entitled, it submits that any overpayment was due to an error by the title company that distributed the proceeds from the sale of the subject properties. BFA was unaware of any overpayment at the time the proceeds were sent to it. BFA is currently in the process of obtaining settlement statements from Lewis to determine the appropriate distribution from the bulk sale.

BFA objects to Lewis’ second proof of claim in its entirety. BFA’s records show that it was the purchase money lender to Tom Church Investments in the initial purchase by Tom Church Investments of the Van Buren I, II, and III properties, and that upon the sale of these properties its purchase money lien interest in on the Van Buren properties superior to the interests of Tom Church Investments. The result of this is that there were no proceeds to distribute to Church after satisfaction of the purchase money lien. In effect, Church’s fractional interest in the proceeds of the sale amounted to zero since the proceeds received upon the sale was less than that required to pay off the superior purchase money lien held by BFA.

BFA objects to Lewis' third proof of claim on the ground that, even if Church's litigation was still pending, Lewis has no standing to assert claims related to lawsuits sold by the Liquidating Trusts to Thomas Church from the Liquidating Trust estate.

Finally, BFA objects to Church's proof of claim on the ground that it is moot due to the recent dismissal of his claims. Moreover, the claims Church sought to bring were without basis as a matter of law. The central foundation of Church's claims was BFA's alleged breach of oral contracts, made in 1991, to continue to extend loans to Church for the purpose of financing land deals. The tort claims also asserted in the litigation related to acts allegedly occurring in 1991 and 1992.

Even moving beyond the fact that Church's tort claims each fell outside any applicable statute of limitations, it is clear that his claims based on a "breach of oral contract to continue to loan money" were invalid as a matter of law under Arizona's statute of frauds, which provides that:

No action shall be brought in any court in the following cases unless the promise or agreement upon which the action is brought, or some memorandum thereof, is in writing and signed by the party to be charged, or by some person by him thereunto lawfully authorized:

\* \* \*

9. Upon a contract, promise, undertaking or commitment to loan money or to grant or extend credit, or a contract, promise, undertaking or commitment to extend, renew or modify a loan or other extension of credit involving both an amount greater than two hundred fifty thousand dollars and not made or extended primarily for personal, family or household purposes.

Ariz. Rev. Stats § 44-101.

BFA also objects to the amount stated in Church's proof of claim on the ground that the claims asserted in Church's lawsuit are disputed, contingent, and without value.

### **III. CONCLUSION**

For the above reasons, BFA respectfully requests that the Court (i) schedule an evidentiary hearing on the claims brought by Lewis and Church; (ii) require each claimant to demonstrate their claim or claims by a preponderance of the evidence; and (iii) disallow each claim to the extent merited by the applicable facts and law.

RESPECTFULLY SUBMITTED this 7th day of November, 2000.

**SQUIRE, SANDERS & DEMPSEY L.L.P.**

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By: /s/ Craig D. Hansen  
Craig D. Hansen

Attorneys for Baptist Foundation of Arizona, Inc.,  
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SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

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09/22/2000

2 CLERK OF THE COURT  
FORM V000

THE HONORABLE MICHAEL A. YARNELL

A. Sandoval  
Deputy

CV1997012491 (Consol.)

FILED: SEP 22 2000

TOM CHURCH, ET UX, ET AL.

RICHARD T. TREON 002064

v.

FOUNDATION COMPANIES, INC.,  
ET AL.

PATRICK J. DAVIS 013808

MINUTE ENTRY

9:30 a.m. In chambers. This is the time set for Comprehensive Pretrial Conference. Jim Crook is present for plaintiffs. Scott Alles is present for defendants.

Court reporter is not present.

Based on plaintiffs' September 21, 2000 Status Report, without objection and good cause appearing,

IT IS ORDERED dismissing these consolidated actions, CV 97-12491 and CV 97-12501 without prejudice; the parties to bear their own costs and fees.

FURTHER ORDERED signing this minute entry as a formal order of the court.

JUDGE MICHAEL A. YARNELL

Michael A. Yarnell, Judge  
Maricopa County Superior Court

Docket Code 042

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